

From: Andrew K. Martin
To: Microsoft ATR
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Subject: Microsoft Settlement

I would like to submit comments on the Microsoft Settlement issue. As a computer professional of fourteen years and a hobbyist prior to that, I have seen the age of the PC since its beginning. I have been able to witness the advances that have been made and the changes that have occurred in the marketplace. One can hardly have seen these times and not know that something is very, very wrong. It is a principal tenet of capitalism that competition benefits both the marketplace and the consumer. Having twice been declared a monopoly and those findings having been repeatedly upheld, we must ask ourselves whether we are strong enough to stand by our beliefs.

Status quo is easy; it is comfortable. And it is human nature to seek that where chaos would otherwise be the case. And that is what the Microsoft monopoly has given consumers.

Take, for example, the last four upgrade cycles of the Microsoft Office suite: Office 95, 97, 2000, and XP. Encompassing six years there has been insignificant change except once when they changed their file formats, presumably to break WordPerfect's ability to read and write Microsoft file formats. Even now, would-be competitors struggle with the state of lock-in that Microsoft enjoys. Companies and individuals who would choose to use other software are prevented by this simple phrase, "Please send your resume in Word format."

Take another example, Microsoft IIS. This is widely known to be the buggyest, most insecure web platform available. Combined with their Internet Explorer and Outlook applications, this triumvirate of vulnerability has cost companies by most estimates billions of dollars. Repeatedly new exploits and viruses come to light and repeatedly companies and individuals are forced to react, spending time and money just to protect themselves from these threats or risk losing data, time, and money to an attack. This has cost Americans billions of dollars; that is billions of dollars out of our economy, out of our pockets. How can one company be allowed to exercise its whim in the marketplace while releasing software that causes as many problems as it solves? How can one company be allowed to impose their negligence, irresponsibility, and outright greed upon the American people before the government will interpose itself with the force of law to put an end to it?

And let us examine Microsoft's strategy with the Java platform. Its first strategy was to attempt to hijack it to make it another Microsoft platform. When they lost the court case they took another route: drop Java support and release their own imitation. (C# is designed to mimic Java on many levels with the obvious strategy of luring Java developers

to the Microsoft platform.) Java is a technology that has benefited consumers greatly. It has enhanced the internet experience with Java applets that add functionality to web pages. It has enhanced the ability of content and service providers to serve up dynamic content. Yet with Microsoft's latest release of Windows and with its last two releases of Internet Explorer, it has intentionally stopped shipping a Java Virtual Machine, even the one they are still allowed to by the terms of the court case. Who suffers? Consumers who are unable to browse hundreds of thousands of web sites that utilize this technology.

When these are combined with the forced distribution that Microsoft enjoys through its OEM licenses computer buyers are forced to buy Microsoft software whether they want to or not; whether they use it or not. Microsoft has spent millions of dollars marketing against computers sold without an operating system despite the availability of free, open operating systems such as FreeBSD. I am a user of alternative operating systems yet when I call Dell and ask to purchase a computer without any Microsoft software, what do they tell me? "I'm sorry, we cannot sell you a computer like that." Forget asking for another operating system.

And Microsoft still tries to maintain this same behavior under more insidious guises: As a settlement to the class action lawsuits brought against them they have proposed giving their software to schools. Why is this a problem? First, this has been the primary market of their main competitor, Apple Computers, for the past fifteen years. This would give them government-granted privilege to force themselves into another market where they could then benefit from lock-in since those schools will have neither the funds nor the expertise to change once locked in to the Microsoft platform. This is a very recent example that Microsoft has not changed its ways, but rather is still constantly seeking unfair advantage in a market it already dominates.

Myself and hundreds others like myself could write pages--volumes--on this topic. The message would be the same. Microsoft has proven itself unable and/or unwilling to restrain its behavior in the marketplace. Therefore it is time for serious government interposition. Another slap on the wrist will not solve the problem. Microsoft has proven with the previous consent decree that they defied that they will not abide the terms of any behavior modification agreements. They have billions of dollars on hand--any financial penalty would be a buy-off.

The only answer is to assert a penalty over the very thing they have abused to gain and maintain their monopoly: their intellectual property. Microsoft should be forced to open up all of its APIs and file formats prior to new releases of software that utilizes them. These should be made available on public web servers that impose no access control or logging facility. Microsoft should be restricted from making changes to these specifications without providing free and public

notice a fair period of time in advance of the release of said changes. This should be audited by a government-selected third-party review board who must clear any release of Microsoft software, and in case of violation, an immediate injunction on the release of the violating software must be imposed. Only in such a situation will Microsoft be forced to compete fairly once again.

While Microsoft would of course object strongly to being forced to make available its proprietary knowledge, I would make two points. First, Microsoft is a repeat-offender and must be dealt with more harshly than a first-time offender. Second, this suggestion does not require Microsoft to reveal how they implement those APIs and file formats, any would-be competitors will still be faced with the challenge of implementing those themselves. All this does is provide an opportunity.

I hope these suggestions will be given careful consideration and I hope the importance of this remedy be given serious reflection before yielding to a powerful corporation. It is, after all, We the People, not the corporations who the Constitution was designed to protect; and that should be of the utmost importance in such affairs.

Sincerely,

Andrew K. Martin
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